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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Yee Yang et al.

Art Unit 3761

Serial No. 10/736,443

Filed December 15, 2003

Confirmation No. 3431

For Absorbent Garment

Examiner Melanie Jo Hand

APPEAL BRIEF

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TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST	1
II.	RELATED APPEALS AND INTERFERENCES	1
III.	STATUS OF CLAIMS	2
IV.	STATUS OF AMENDMENTS	2
V.	SUMMARY OF CLAIMED SUBJECT MATTER	2
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	5
VII.	ARGUMENT	6
	Claims 1-36 are nonobvious in view of and patentable over U.S. Patent No. 6,115,847 (Rosch et al.) in combination with U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.)	6
	Claims 1-20	6
	Claims 21-36	12
VIII.	CONCLUSION	19
	CLAIMS APPENDIX	20
	EVIDENCE APPENDIX	34
	RELATED PROCEEDINGS APPENDIX	35

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June 22, 2007

APPEAL BRIEF

This is an appeal from the rejection of the claims of the above-referenced application made in the Office action dated February 21, 2007. A Notice of Appeal was filed on April 23, 2007.

The Commissioner is hereby authorized to charge the fee for the appeal brief in the amount of \$500 to Deposit Account No. 19-1345. The Commissioner is also hereby authorized to charge any additional fees which may be required to Deposit Account No. 19-1345.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is Kimberly-Clark Worldwide, Inc. of 401 N. Lake Street, Neenah, Wisconsin 54957-0349, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application.

II. RELATED APPEALS AND INTERFERENCES

An appeal has been filed in U.S. Patent Application Serial No. 10/735,978 entitled ABSORBENT GARMENT. The '978 application has common subject matter with the case at hand and Kimberly-

Clark Worldwide, Inc. is owner of a 100 percent interest in the '978 application.

III. STATUS OF CLAIMS

Claims 1-36 are currently pending in the application for consideration. A copy of the claims involved in this appeal appears in the Claims Appendix of this Brief.

Claims 1-36 stand rejected under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,115,847 (Rosch et al.) in combination with U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.). The rejections of claims 1-36 under 35 U.S.C. §103(a) are being appealed.

Claims 1-10 and 12-20 stand further rejected under the nonstatutory, provisional obviousness-type double patenting based on claims 1-7, 9-12, 16, 17, 19, and 22-25 of copending, commonly owned U.S. Patent Application No. 10/735,978. See page 3 of the Office action dated February 21, 2007 and pages 2 and 3 of the Office action dated March 28, 2006. The double patenting rejections of claims 1-10 and 12-20 are not being appealed herein.

IV. STATUS OF AMENDMENTS

No amendments have been filed after the rejection from which this appeal is taken (i.e., the Office action dated February 21, 2007).

V. SUMMARY OF CLAIMED SUBJECT MATTER

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

With reference to the present specification and drawings, claim 1 is directed to an absorbent garment 10 for wear about a wearer's waist. See page 10, paragraph [0038] and Figs. 1 and 2. The absorbent garment 10 comprises a garment shell 22 configured for encircling the wearer's waist and having a front waist region 32, a front waist end 56 at the front waist region, a back waist region 34, and a back waist end 58 at the back waist region. See page 11, paragraph [0041] and Figs. 1 and 2. The garment shell 22 comprises a front panel assembly 26 having laterally opposite side margins 48, and a back panel assembly 28 having laterally opposite side margins 50. See page 11, paragraph [0040] and Fig. 2. An absorbent assembly 24 is disposed within the garment shell 22 and constructed to take in and retain body exudates released by the wearer. See page 10, paragraph [0039] and Figs. 1-3. The absorbent assembly 24 has an inner surface 128 adapted for contiguous relationship with the wearer's body, an outer surface 130, a front waist region 122 in opposed relationship with the front waist region 32 of the garment shell 22, a back waist region 124 in opposed relationship with the back waist region 34 of the garment shell, a crotch region 126 extending longitudinally between and interconnecting the front waist region and the back waist region, a front waist end 138 and a back waist end 140 (see page 20, paragraph [0059] and Figs. 2-6), laterally spaced front side panels 180 extending outward from the front waist region, and laterally opposite back side panels 182 extending outward from the back waist region. See page 33, paragraph [0086] and Fig. 5. The front side panels 180 (580) of the absorbent assembly 24 (424) are attached to the garment shell 22 (422) generally at the side margins 48 of the front panel assembly 26 (426) to together define front side margins 16 of the absorbent garment 10. See page 44, paragraph [00106] and Figs. 9 and 10. The

back side panels 182 (582) of the absorbent assembly 24 (424) are attached to the garment shell 22 (422) generally at the side margins 50 of the back panel assembly 28 (428) to together define back side margins 18 of the absorbent garment 10. See page 44, paragraph [00106] and Figs. 9 and 10. The front side margins 16 and the back side margins 18 of the absorbent garment 10 are releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist. See page 44, paragraph [00107] and Figs. 9 and 10.

Claim 21 is directed to an absorbent garment 10 for wear about a wearer's waist. See page 10, paragraph [0038] and Figs. 1 and 2. The absorbent garment 10 comprises a garment shell 22 configured for encircling the wearer's waist and being further configured as a pair of shorts having a pair of leg openings defining outer leg openings 40 of the absorbent garment. See page 11, paragraph [0041] and Fig. 1. An absorbent assembly 24 is disposed within the garment shell 22 and constructed to take in and retain body exudates released by the wearer. See page 10, paragraph [0039] and Figs. 1-3. At least a portion of the absorbent assembly 24 is attached to the garment shell 22. See page 11, paragraph [0041] and Figs. 1 and 2. The absorbent assembly 24 has an inner surface 128 adapted for contiguous relationship with the wearer's body, an outer surface 130, a front waist region 122, a back waist region 124, and a crotch region 126 extending longitudinally between and interconnecting the front waist region and the back waist region of the absorbent assembly. See page 20, paragraph [0059] and Figs. 2-6. The absorbent assembly 24 at least in part defines inner leg openings 170 of the absorbent garment 10 wherein the inner leg openings are separate from the outer leg openings 40 of the absorbent garment. See page 32, paragraph [0084] and Fig. 3. The absorbent garment 10 further has a waist opening 20,

laterally opposite front side margins 48, and corresponding laterally opposite back side margins 50. See page 10, paragraph [0038], page 11, paragraph [0040] and Fig. 2. The front side margins 48 and back side margins 50 at least in part are defined by the garment shell 22. See page 11, paragraph [0040] and Fig. 2. The front side margins 48 of the absorbent garment 10 are in overlapping relationship with the back side margins 50 of the absorbent garment to define laterally opposite side seams 19 of the absorbent garment wherein the side seams each have a length extending generally from the waist opening 20 of the absorbent garment to a respective one of the outer leg openings 40 of the absorbent garment. See page 11, paragraph [0040] and Figs. 2 and 3. The side seams 19 of the absorbent garment 10 each have a respective upper segment along which the front side margins 48 and back side margins 50 of the absorbent garment are attached to each other. See page 17, paragraph [0051] and Fig. 2. The upper segment has a length extending from the waist opening 20 of the absorbent garment 10 to less than about 50 percent of the length of the side seam. See page 17, paragraph [0051] and Figs. 2 and 3. The front side margins 48 and the back side margins 50 of the absorbent garment 10 are free from attachment to each other along the remaining length of each respective side seam 19 generally from the upper segment of the side seam to the respective outer leg opening 40 of the absorbent garment. See page 17, paragraph [0051] and Figs. 2 and 3.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejections of claims 1-36 under 35 U.S.C. §103(a) as being obvious in view of U.S. Patent No. 6,115,847 (Rosch et al.) in combination with U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.).

VII. ARGUMENT

Claims 1-36 are nonobvious in view of and patentable over U.S. Patent No. 6,115,847 (Rosch et al.) in combination with U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.).

Claims 1-20

Claim 1 is directed to an absorbent garment for wear about a wearer's waist. The absorbent garment comprises:

a garment shell configured for encircling the wearer's waist and having a front waist region, a front waist end at said front waist region, a back waist region, and a back waist end at said back waist region, the garment shell comprising a front panel assembly having laterally opposite side margins, and a back panel assembly having laterally opposite side margins; and

an absorbent assembly disposed within the garment shell and constructed to take in and retain body exudates released by the wearer, the absorbent assembly having an inner surface adapted for contiguous relationship with the wearer's body, an outer surface, a front waist region in opposed relationship with the front waist region of the garment shell, a back waist region in opposed relationship with the back waist region of the garment shell, a crotch region extending longitudinally between and interconnecting the front waist region and the back waist region, a front waist end and a back waist end, laterally spaced front side panels extending outward from the front waist region and laterally opposite back side panels extending outward from the back waist region, the front side panels of the absorbent assembly being attached to the garment shell generally at the side margins of the front panel assembly to together define front side margins of the absorbent garment, said back side

panels of the absorbent assembly being attached to the garment shell generally at the side margins of the back panel assembly to together define back side margins of the absorbent garment, the front side margins and the back side margins of the absorbent garment being releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist.

As described in paragraph [00110] and shown, for example, in Figs. 9 and 10 of the present specification, one absorbent garment 10 according to claim 1 has a garment shell 422, an absorbent assembly 424 disposed within the garment shell, and fastening components 452, 454. As shown in Fig. 10, one set of fastening components 452 is attached to an outer surface of the garment shell 422, and the other set of fastening components 454 is attached to an inner surface of the absorbent assembly 424. In the illustrated embodiment, front side panels 580 of the absorbent assembly are attached to the side margins 448 of the front panel assembly 426 of the garment shell and back side panels 582 are attached to the side margins 450 of the back panel assembly of the garment shell. As such, the side panels of the absorbent assembly and side margins of the garment shell together define joint side margins of the absorbent garment.

By securing the absorbent assembly side panels to the side margins of the garment shell in this manner, the garment shell and absorbent assembly can be conjointly refastenably opened and closed along the side margins of the garment by using a single set of fasteners. That is, opening the garment along the side margins thereof conjointly opens both the garment shell and the absorbent assembly. This allows the caregiver to quickly and easily check the absorbent assembly for soiling by the wearer. The caregiver is able to check the absorbent assembly by unfastening a single set of fasteners (i.e., either of the sets

of fasteners along the side margins), and if not soiled, reattached about the wearer by refastening the single set of fasteners. If the absorbent assembly is soiled, both the shell and absorbent assembly can be removed without sliding the garment down the wearer's legs, which can undesirably result in the wearer's leg becoming soiled or the soil falling from the absorbent assembly, by unfastening both sets of fasteners.

As explained in greater detail below, U.S. Patent No. 6,115,847 (Rosch et al.) and U.S. Patent Application Publication No. 2002/0087137 (Christoffel et al.) fail to teach or suggest such an advantageous garment. Instead, any garment taught or suggested by Rosch et al. and/or Christoffel et al. requires the entire garment (i.e., both the shell and the absorbent assembly) or a portion thereof (i.e., the shell) to be pulled down to check for soiling. Accordingly, the claimed invention has significant advantages over any garment taught or suggested by the cited prior art.

As a result, claim 1 is submitted to be nonobvious in view of and patentable over Rosch et al. in view of Christoffel et al., in that whether considered alone or in combination the references fail to show or suggest an absorbent garment in which 1) front side panels of an absorbent assembly of the garment are attached to a garment shell generally at the side margins of a front panel assembly of the garment shell to together define front side margins of the absorbent garment, 2) back side panels of the absorbent assembly are attached to the garment shell generally at the side margins of a back panel assembly of the garment shell to together define back side margins of the absorbent garment, and 3) the front side margins and the back side margins of the absorbent garment are releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist.

Rosch et al., with reference to Figs. 1 and 2 thereof, disclose an active wear garment 10 comprised of a pant structure 12 and a skirt cover 14. The skirt cover 14 has a front panel 15 (Fig. 1) secured to a back panel 21 (Fig. 2). The front panel 15 of the skirt cover 14 has a pair of side edges 17, 19 and the back panel 21 has a pair of side edges 23, 25. Rosch et al. disclose that the side edges 17, 19 of the front panel 15 can be joined to the respective side edge 23, 25 of the back panel 21 to form a one piece skirt cover 14. The side edges 17, 19, 23, 25 can be either refastenably or non-refastenably joined. Alternatively, the side edges 17, 19, 23, and 25 can be free from joining thereby forming a two-piece skirt cover 14.

As illustrated in Fig. 2, the pant structure 12 includes front and back longitudinally spaced waist band regions 20 and 22. A crotch area 24 extends between the front waist band region 20 and the back waist band region 22. A left side panel 26 and a right side panel 28 extend between the front waist region 20 and the back waist region 22. The side panels 26, 28 of the pant structure provide a manually tearable, non-refastenable region. Nowhere does Rosch et al. teach or suggest that the side panels 26, 28 of the pant structure 12 can be attached to the skirt cover 14, let alone at the side edges 17, 19, 23, 25 thereof.

In Figs. 4 and 5, Rosch et al. disclose a garment 110 of another embodiment having a trunk (e.g., shorts-type) cover 114 instead of the skirt cover 14 shown in Figs. 1 and 2. The trunk cover 114 can be combined with a pant structure 112 or used by itself (i.e., without a pant structure). When the pant structure 112 is combined with the trunk cover 114, the pant structure and the trunk cover are permanently joined at the waist. The trunk cover 114 includes a pair of front side edges 117, 119 and a pair of back side edges 123, 125. One of the

front side edges 117 of the trunk cover is joined to one of the back side edges 123 thereof, and the other front side edge 119 is joined to the other back side edge 125. The front and back side edges 117, 119, 123, 125 can be non-refastenably joined together or can be refastenably joined.

As shown in Fig. 5, the pant structure 112 has front and back longitudinally spaced waist band regions 120 and 122, and a crotch area 124 extending between the front and back waist band regions. A left side panel 126 and a right side panel 128 extend laterally between the front waist region 120 and the back waist region 122. The left and right side panels 126, 128 can form manually tearable, non-refastenable regions of the pant structure 112 (Fig.4) or, as it appears in Fig. 5, the left and right side panels can form refastenable regions of the pant structure. Nowhere, however, does Rosch et al. teach or suggest that the side panels 126, 128 of the pant structure 112 can be attached to the trunk cover 114, let alone along the side edges 117, 119, 123, 125 of the trunk cover. Rather, the only attachment between the trunk cover and pant structure is along the waist band regions.

Because the side panels 126, 128 of the pant structure 112 are not attached to the side edges 117, 119, 123, 125 of the trunk cover 114, the side panels 126, 128 of the pant structure must be opened separate from the side edges 117, 119, 123, 125 of the trunk cover. That is, to open the garment of Rosch et al. along the side seams, a user must first separate the side edges of the trunk cover 114 and then separately separate the side edges of the pant structure 112.

In contrast, by attaching the front and back side panels of the recited absorbent assembly to the side margins of the recited front and back panel assemblies of the garment shell as recited in claim 1, only one set of fasteners and one opening

motion is needed to open each side of the garment.

Rosch et al. thus fail to disclose or suggest 1) front side panels of an absorbent assembly of the garment are attached to a garment shell generally at the side margins of a front panel assembly of the garment shell to together define front side margins of the absorbent garment, 2) back side panels of the absorbent assembly are attached to the garment shell generally at the side margins of a back panel assembly of the garment shell to together define back side margins of the absorbent garment, and 3) the front side margins and the back side margins of the absorbent garment are releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist.

Christoffel et al. does not add to the teachings of Rosch et al. In each embodiment illustrated and described in Christoffel et al., a one-piece disposable swimsuit 20 comprises a chassis 22 secured to a bodice 42 to form the one-piece swimsuit. In some of the disclosed embodiments the swimsuit 20 may further incorporate a relatively small rectangular integral absorbent assembly 54. See, e.g., Fig. 2 and paragraphs [0089-0091] in which the absorbent assembly is disposed between the coverstock 50 and a body side liner 108. In other embodiments, Christoffel et al. teach that the swimsuit 20 may be worn over a separate absorbent garment 88 (such as an absorbent swim pant). See, e.g., Fig. 16 and paragraph [0069].

Thus, Christoffel et al. fail to teach that the swimsuit is separable at all along side seams thereof. As such, Christoffel et al. (like Rosch et al.) fail to teach or suggest an absorbent garment in which 1) front side panels of an absorbent assembly of the garment are attached to a garment shell generally at the side margins of a front panel assembly of the garment shell to together define front side margins of the absorbent garment, 2)

back side panels of the absorbent assembly are attached to the garment shell generally at the side margins of a back panel assembly of the garment shell to together define back side margins of the absorbent garment, and 3) the front side margins and the back side margins of the absorbent garment are releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist.

Since both Rosch et al. and Christoffel et al. fail individually to teach or suggest various features of claim 1, a combination of these references must also fail to teach or suggest these features.

For these reasons, claim 1 is submitted to be nonobvious in view of and patentable over Rosch et al. in combination with Christoffel et al.

Claims 2-20 depend directly or indirectly from claim 1 and are submitted to be patentable over the references of record for at least the same reasons as claim 1.

Claims 21-36

Claim 21 is directed to an absorbent garment for wear about a wearer's waist. The absorbent garment comprises:

a garment shell configured for encircling the wearer's waist and being further configured as a pair of shorts having a pair of leg openings defining outer leg openings of the absorbent garment; and

an absorbent assembly disposed within the garment shell and constructed to take in and retain body exudates released by the wearer, at least a portion of the absorbent assembly being attached to the garment shell, said absorbent assembly having an inner surface adapted for contiguous relationship with the wearer's body, an outer surface, a front waist region, a back waist region, and a crotch region extending longitudinally

between and interconnecting the front waist region and the back waist region of the absorbent assembly, said absorbent assembly at least in part defining inner leg openings of the absorbent garment wherein said inner leg openings are separate from the outer leg openings of the absorbent garment;

the absorbent garment further having a waist opening, laterally opposite front side margins and corresponding laterally opposite back side margins, the front side margins and back side margins being at least in part defined by the garment shell, said front side margins of the absorbent garment being in overlapping relationship with said back side margins of the absorbent garment to define laterally opposite side seams of the absorbent garment wherein the side seams each have a length extending generally from the waist opening of the absorbent garment to a respective one of the outer leg openings of the absorbent garment, said side seams of the absorbent garment each having a respective upper segment along which the front side margins and back side margins of the absorbent garment are attached to each other, said upper segment having a length extending from the waist opening of the absorbent garment to less than about 50 percent of the length of the side seam, the front side margins and the back side margins of the absorbent garment being free from attachment to each other along the remaining length of each respective side seam generally from the upper segment of said side seam to the respective outer leg opening of the absorbent garment.

As described in paragraph [00116] and shown, for example, in Fig. 11 of the present specification, an absorbent garment 10 according to one embodiment has a garment shell 422 and an absorbent assembly 424 disposed within the garment shell. As shown in Fig. 11, overlapping front and back side margins 16, 18 of the absorbent garment 10 are attached to each other along a

small upper segment 602 thereof. The side margins 16, 18 are otherwise substantially free from engagement along the remaining length of the side margins. This provides the user with substantially uninhibited movement of their legs. In other words, the seams at the side margins of the claimed garment do not inhibit movement of the wearer's legs.

Claim 21 is submitted to be nonobvious in view of and patentable over Rosch et al. in view of Christoffel et al., in that whether considered alone or in combination the references fail to show or suggest an absorbent garment including front side margins of the absorbent garment being in overlapping relationship with back side margins of the absorbent garment to define laterally opposite side seams of the absorbent garment wherein the side seams each have a length extending generally from the waist opening of the absorbent garment to a respective one of the outer leg openings of the absorbent garment, the side seams of the absorbent garment each having a respective upper segment along which the front side margins and back side margins of the absorbent garment are attached to each other, said upper segment having a length extending from the waist opening of the absorbent garment to less than about 50 percent of the length of the side seam, the front side margins and the back side margins of the absorbent garment being free from attachment to each other along the remaining length of each respective side seam generally from the upper segment of the side seam to the respective outer leg opening of the absorbent garment.

Rosch et al., with reference to Figs. 1 and 2 thereof, disclose an active wear garment 10 comprised of a pant structure 12 and a skirt cover 14. The skirt cover 14 has a front panel 15 (Fig. 1) secured to a back panel 21 (Fig. 2). The front panel 15 of the skirt cover 14 has a pair of side edges 17, 19 and the back panel 21 has a pair of side edges 23, 25. Rosch et

al. disclose that the side edges 17, 19 of the front panel 15 can be joined to the respective side edge 23, 25 of the back panel 21 to form a one piece skirt cover 14. The side edges 17, 19, 23, 25 can be either refastenably or non-refastenably joined along substantially their entire length. Alternatively, the side edges 17, 19, 23, and 25 can be free from joining along their entire length thereby forming a two-piece skirt cover 14.

As illustrated in Fig. 2, the pant structure 12 includes front and back longitudinally spaced waist band regions 20 and 22. A crotch area 24 extends between the front waist band region 20 and the back waist band region 22. A left side panel 26 and a right side panel 28 extend between the front waist region 20 and the back waist region 22. The side panels 26, 28 of the pant structure provide a manually tearable, non-refastenable region.

In Figs. 4 and 5, Rosch et al. disclose a garment 110 of a second embodiment having a trunk (e.g., shorts-type) cover 114 instead of the skirt cover 14 shown in Figs. 1 and 2. The trunk cover 114 can be combined with a pant structure 112 or used by itself (i.e., without a pant structure). When the pant structure 112 is combined with the trunk cover 114, the pant structure and the trunk cover are joined at the waist. The trunk cover 114 includes a pair of front side edges 117, 119 and a pair of back side edges 123, 125. One of the front side edges 117 is joined to one of the back side edges 123, and the other front side edge 119 is joined to the other back side edge 125. The front and back side edges 117, 119, 123, 125 can be non-refastenably joined together or can be refastenably joined along substantially their entire length.

As shown in Fig. 5, the pant structure 112 includes front and back longitudinally spaced waist band regions 120 and 122, and a crotch area 124 extending between the front and back waist

band regions. A left side panel 126 and a right side panel 128 extend laterally between the front waist region 120 and the back waist region 122. The left and right side panels 126, 128 can form manually tearable, non-refastenable regions of the pant structure 112 (Fig.4) or, as it appears in Fig. 5, the left and right side panels can form refastenable regions of the pant structure.

Nowhere does Rosch et al. teach or suggest that the side edges of garment 10, 110 can be attached from the waist opening of the absorbent garment to less than about 50 percent of the length of the side seam with the remaining length of the side seam being free from attachment to each other. Rather, the only teaching or suggestion found in Rosch et al. is to secured the side seams along the entire length thereof.

It appears the Office has taken the position that the non-refastenable seams taught by Rosch et al. include side edges that are not attached to one another. See Response to Arguments on pages 2 and 3 of the Office action. However, this position is inconsistent with the teachings of Rosch et al. See, e.g., col. 4, lines 50-61 and col. 11, lines 1-13. Rosch et al. teaches that the non-refastenable seams are seams that cannot be refastened once they are ruptured such as by manually tearing of the seam. In other words, the non-refastenable seams of Rosch et al. are formed by attaching two pieces together in such a way (e.g., ultrasonic bonding, adhesive, or heat sealing) that they cannot be reattached once the attachment therebetween is broken. The Office's position that the non-refastenable seams of Rosch et al. include no attachment whatsoever is clearly inconsistent with and not within the teachings of Rosch et al.

As such, Rosch et al. fail to disclose or suggest this feature as recited in claim 21.

In each embodiment illustrated and described in Christoffel

et al. a one-piece disposable swimsuit 20 comprises a chassis 22 secured to a bodice 42 to form the one-piece swimsuit. In some of the disclosed embodiments the swimsuit 20 may further incorporate a relatively small rectangular integral absorbent assembly 54. See, e.g., Fig. 2 and paragraphs [0089-0091] in which the absorbent assembly is disposed between the coverstock 50 and a body side liner 108. In other embodiments, Christoffel et al. teach that the swimsuit 20 may be worn over a separate absorbent garment 88 (such as an absorbent swim pant). See, e.g., Fig. 16 and paragraph [0069]. None of the embodiments of Christoffel et al. teach or suggest that the swimsuit can have side seams attached along only a portion of their length while another portion of their length is free from attachment.

Thus, Christoffel et al. (like Rosch et al.) fail to teach or suggest an absorbent garment having side seams of the absorbent garment with a respective upper segment along which front side margins and back side margins of the absorbent garment are attached to each other, the upper segment having a length extending from the waist opening of the absorbent garment to less than about 50 percent of the length of the side seam, the front side margins and the back side margins of the absorbent garment being free from attachment to each other along the remaining length of each respective side seam generally from the upper segment of said side seam to the respective outer leg opening of the absorbent garment as recited in claim 21.

Since both Rosch et al. and Christoffel et al. fail individually to teach or suggest the same feature of claim 21, a combination of these references must fail to teach or suggest each and every feature of claim 21.

The Office has taken the position that "it would be obvious to one of ordinary skill in the art to modify said side seams so as to contain both refastenable and non-refastenable portions,

for example having a non-refastenable portion located above fasteners 96 on each side seam". See page 7, second paragraph of the Office action. However, claim 21 recites that the front side margins and the back side margins of the absorbent garment are free from attachment to each other along the remaining length of each respective side seam generally from the upper segment of said side seam to the respective outer leg opening of the absorbent garment. That is, whether the side edges are in part refastenable and in part non-refastenable begs the issue because either way, the side edges are fastened together, (e.g., either refastenably or permanently) which is contrary to the recitation in claim 21 that the front and back side margins are free from attachment along the remaining length of the side seams. Thus, applicants submit that the position taken by the Office does not read on the language of the claim and thus fails to establish a *prima facie* case of obviousness with respect to claim 21.

For these reasons, claim 21 is submitted to be nonobvious and patentable over the references of record.

Claims 22-36 depend directly or indirectly from claim 21 and are submitted to be patentable over the references of record for at least the same reasons as claim 21.

VIII. CONCLUSION

For the reasons stated above, appellants respectfully request that the Office's rejections be reversed and that claims 1-36 be allowed.

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CLAIMS APPENDIX

1. An absorbent garment for wear about a wearer's waist, said absorbent garment comprising:

a garment shell configured for encircling the wearer's waist and having a front waist region, a front waist end at said front waist region, a back waist region, and a back waist end at said back waist region, the garment shell comprising a front panel assembly having laterally opposite side margins, and a back panel assembly having laterally opposite side margins; and

an absorbent assembly disposed within the garment shell and constructed to take in and retain body exudates released by the wearer, the absorbent assembly having an inner surface adapted for contiguous relationship with the wearer's body, an outer surface, a front waist region in opposed relationship with the front waist region of the garment shell, a back waist region in opposed relationship with the back waist region of the garment shell, a crotch region extending longitudinally between and interconnecting the front waist region and the back waist region, a front waist end and a back waist end, laterally spaced front side panels extending outward from the front waist region and laterally opposite back side panels extending outward from the back waist region, the front side panels of the absorbent assembly being attached to the garment shell generally at the side margins of the front panel assembly to together define

front side margins of the absorbent garment, said back side panels of the absorbent assembly being attached to the garment shell generally at the side margins of the back panel assembly to together define back side margins of the absorbent garment, the front side margins and the back side margins of the absorbent garment being releasably and refastenably attached to each other to removably secure the absorbent garment on the wearer's waist.

2. An absorbent garment as set forth in claim 1 wherein at least a portion of the front waist end of the absorbent assembly is attached to the front waist end of the garment shell and at least a portion of the back waist end of the absorbent assembly is attached to the back waist end of the garment shell.

3. An absorbent garment as set forth in claim 1 wherein the absorbent assembly has laterally opposite outer edges at the front waist region of said absorbent assembly and corresponding laterally opposite outer edges generally at the back waist region of said absorbent assembly, the absorbent assembly being attached generally at the laterally opposite outer edges of the front waist region to the garment shell generally at the side margins of the front panel assembly and being further attached generally at the laterally opposite outer edges of the back

waist region to the garment shell generally at the side margins of the back panel assembly.

4. An absorbent garment as set forth in claim 3 wherein the absorbent garment has laterally opposite front side panels extending laterally outward generally at the front waist region of the absorbent assembly and having respective outer edges defining the outer edges of the absorbent assembly at said front waist region, and laterally opposite back side panels extending laterally outward generally at the back waist region of the absorbent assembly and having respective outer edges defining the outer edges at said back waist region of the absorbent assembly, the front side panels being attached generally at the outer edges thereof to the front panel assembly of the garment shell generally at the side margins of said front panel assembly, the back side panels being attached generally at the outer edges thereof to the back panel assembly of the garment shell generally at the side margins of said back panel assembly.

5. An absorbent garment as set forth in claim 1 wherein the absorbent garment has at least one outer leg opening and a pair of inner leg openings separate from the at least one leg opening and disposed within the garment shell, the absorbent assembly at least in part defining said inner leg

openings of the absorbent garment, said garment shell defining said at least one outer leg opening of the absorbent garment.

6. An absorbent garment as set forth in claim 5 wherein the absorbent assembly is configured to provide an elastic fit of the absorbent assembly against the wearer's legs at the inner leg openings of the absorbent garment, the garment shell being configured to generally hang loose about the wearer's legs at the at least one outer leg opening of the absorbent garment.

7. An absorbent garment as set forth in claim 5 wherein the absorbent assembly is configured to encircle the legs of the wearer and fully defines the inner leg openings of the absorbent garment.

8. An absorbent garment as set forth in claim 5 wherein the garment shell further has a crotch region extending longitudinally between the front and back waist regions of the garment shell, the crotch region of the garment shell at least in part defining a pair of outer leg openings of the absorbent garment which are separate from the inner leg openings of the absorbent garment.

9. An absorbent garment as set forth in claim 8 wherein the crotch region of the absorbent assembly is free from attachment to the crotch region of the garment shell.

10. An absorbent garment as set forth in claim 1 further comprising at least one waist elastic member operatively joined to at least one of the front waist end of the absorbent assembly, the back waist end of the absorbent assembly, the front waist end of the garment shell and the back waist end of the garment shell to provide an elastic fit of the absorbent garment against the wearer's waist.

11. An absorbent garment as set forth in claim 1 wherein the absorbent assembly is elastically stretchable at least at said front and back waist ends of said absorbent assembly, the front and back waist ends of the absorbent assembly being operatively joined respectively to the front and back waist ends of the garment shell to gather the garment shell generally at the front and back waist ends of said garment shell.

12. An absorbent garment as set forth in claim 1 wherein the absorbent garment has a waist opening, the absorbent assembly being configured to encircle the waist of the wearer generally at the front and back waist ends of the absorbent

assembly to fully define the waist opening of the absorbent garment.

13. An absorbent garment as set forth in claim 12 wherein the absorbent assembly is a brief-style absorbent assembly.

14. An absorbent garment as set forth in claim 1 wherein the garment shell has a configuration selected from the group comprising shorts, skorts, skirts and swim trunks.

15. An absorbent garment as set forth in claim 1 wherein the absorbent garment has a waist opening, at least one outer leg opening, and laterally opposite side seams extending generally from the waist opening to said at least one outer leg opening, the absorbent garment being releasable and refastenable along at least a portion of each of said side seams.

16. An absorbent garment as set forth in claim 15 wherein the absorbent garment is releasable and refastenable along the entire length of each of said side seams.

17. An absorbent garment as set forth in claim 1 wherein the absorbent garment has laterally opposite front side margins and corresponding laterally opposite back side margins, the

front side margins and the back side margins being in overlapping relationship with each other to define laterally opposite side seams of the absorbent garment, the amount of overlap of the front side margins with the back side margins being in the range of about 0.1 inches (2.5 mm) to about 6 inches (152.4 mm).

18. An absorbent garment as set forth in claim 17 wherein the amount of overlap of the front side margins with the back side margins is in the range of about 0.5 inches (12.7 mm) to about 3 inches (76.2 mm).

19. An absorbent garment as set forth in claim 1 wherein the absorbent assembly comprises a liquid permeable liner defining the inner surface of the absorbent assembly adapted for contiguous relationship with the wearer, an outer cover in generally opposed relationship with the liner and defining the outer surface of the absorbent assembly, and an absorbent body disposed between the liner and the outer cover.

20. An absorbent garment as set forth in claim 19 wherein the outer cover of the absorbent assembly is liquid impermeable and the garment shell is liquid permeable.

21. An absorbent garment for wear about a wearer's waist, said absorbent garment comprising:

a garment shell configured for encircling the wearer's waist and being further configured as a pair of shorts having a pair of leg openings defining outer leg openings of the absorbent garment; and

an absorbent assembly disposed within the garment shell and constructed to take in and retain body exudates released by the wearer, at least a portion of the absorbent assembly being attached to the garment shell, said absorbent assembly having an inner surface adapted for contiguous relationship with the wearer's body, an outer surface, a front waist region, a back waist region, and a crotch region extending longitudinally between and interconnecting the front waist region and the back waist region of the absorbent assembly, said absorbent assembly at least in part defining inner leg openings of the absorbent garment wherein said inner leg openings are separate from the outer leg openings of the absorbent garment;

the absorbent garment further having a waist opening, laterally opposite front side margins and corresponding laterally opposite back side margins, the front side margins and back side margins being at least in part defined by the garment shell, said front side margins of the absorbent garment being in overlapping relationship with said back side margins of the

absorbent garment to define laterally opposite side seams of the absorbent garment wherein the side seams each have a length extending generally from the waist opening of the absorbent garment to a respective one of the outer leg openings of the absorbent garment, said side seams of the absorbent garment each having a respective upper segment along which the front side margins and back side margins of the absorbent garment are attached to each other, said upper segment having a length extending from the waist opening of the absorbent garment to less than about 50 percent of the length of the side seam, the front side margins and the back side margins of the absorbent garment being free from attachment to each other along the remaining length of each respective side seam generally from the upper segment of said side seam to the respective outer leg opening of the absorbent garment.

22. An absorbent garment as set forth in claim 21 wherein the amount of overlap of the front side margins of the absorbent garment with the back side margins of the absorbent garment is in the range of about 0.1 inches (2.5 mm) to about 6 inches (152.4 mm).

23. An absorbent garment as set forth in claim 22 wherein the amount of overlap of the front side margins of the absorbent

garment with the back side margins of the absorbent garment is in the range of about 0.5 inches (12.7 mm) to about 3 inches (76.2 mm)

24. An absorbent garment as set forth in claim 21 wherein the front side margins of the absorbent garment and the back side margins of the absorbent garment are releasably attached to each other at the upper segments of the side seams of the absorbent garment.

25. An absorbent garment as set forth in claim 21 wherein the garment shell comprises a front panel assembly having laterally opposite side margins and a back panel assembly having laterally opposite side margins, the absorbent assembly being attached at the front waist region thereof to the garment shell generally at the side margins of the front panel assembly to together define the front side margins of the absorbent garment, said absorbent assembly further being attached at the back waist region thereof to the garment shell generally at the side margins of the back panel assembly to together define the back side margins of the absorbent garment.

26. An absorbent garment as set forth in claim 21 wherein the absorbent assembly further has a front waist end and a back

waist end, the garment shell also having a front waist end and a back waist end, at least a portion of the front waist end of the absorbent assembly being attached to the front waist end of the garment shell and at least a portion of the back waist end of the absorbent assembly being attached to the back waist end of the garment shell.

27. An absorbent garment as set forth in claim 25 wherein the absorbent assembly has laterally opposite outer edges at the front waist region of said absorbent assembly and corresponding laterally opposite outer edges generally at the back waist region of said absorbent assembly, the absorbent assembly being attached generally at its laterally opposite outer edges of the front waist region to the garment shell generally at the side margins of the front panel assembly, the absorbent assembly being further attached generally its laterally opposite outer edges of the back waist region to the garment shell generally at the side margins of the back panel assembly.

28. An absorbent garment as set forth in claim 27 wherein the absorbent garment has laterally opposite front side panels extending laterally outward generally at the front waist region of the absorbent assembly and having respective outer edges defining the outer edges of the absorbent assembly at said front

waist region, and laterally opposite back side panels extending laterally outward generally at the back waist region of the absorbent assembly and having respective outer edges defining the outer edges at said back waist region of the absorbent assembly, the front side panels being attached generally at the outer edges thereof to the front panel assembly of the garment shell generally at the side margins of said front panel assembly, the back side panels being attached generally at the outer edges thereof to the back panel assembly of the garment shell generally at the side margins of said back panel assembly.

29. An absorbent garment as set forth in claim 21 wherein the absorbent assembly is configured to provide an elastic fit of the absorbent assembly against the wearer's legs at the inner leg openings of the absorbent garment, the garment shell being configured to generally hang loose about the wearer's legs at the outer leg openings of the absorbent garment.

30. An absorbent garment as set forth in claim 21 wherein the absorbent assembly is configured to encircle the legs of the wearer and fully defines the inner leg openings of the absorbent garment.

31. An absorbent garment as set forth in claim 21 wherein the absorbent assembly further has a front waist end and a back waist end, the garment shell also having a front waist end and a back waist end, the absorbent garment further comprising at least one waist elastic member operatively joined to at least one of the front waist end of the absorbent assembly, the back waist end of the absorbent assembly, the front waist end of the garment shell and the back waist end of the garment shell to provide an elastic fit of the absorbent garment against the wearer's waist.

32. An absorbent garment as set forth in claim 21 wherein the absorbent assembly further has a front waist end and a back waist end, the garment shell also having a front waist end and a back waist end, the absorbent assembly being elastically stretchable at least at the front and back waist ends of said absorbent assembly, the front and back waist ends of the absorbent assembly being operatively joined respectively to the front and back waist ends of the garment shell to gather the garment shell generally at the front and back waist ends of said garment shell.

33. An absorbent garment as set forth in claim 21 wherein the absorbent garment has a waist opening, the absorbent

assembly having front and back waist ends and being configured to encircle the waist of the wearer generally at the front and back waist ends of the absorbent assembly to fully define the waist opening of the absorbent garment.

34. An absorbent garment as set forth in claim 33 wherein the absorbent assembly is a brief-style absorbent assembly.

35. An absorbent garment as set forth in claim 21 wherein the absorbent assembly comprises a liquid permeable liner defining the inner surface of the absorbent assembly adapted for contiguous relationship with the wearer, an outer cover in generally opposed relationship with the liner and defining the outer surface of the absorbent assembly, and an absorbent body disposed between the liner and the outer cover.

36. An absorbent garment as set forth in claim 35 wherein the outer cover of the absorbent assembly is liquid impermeable and the garment shell is liquid permeable.

K-C 17,515C
KCC 4972.2

EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.